

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

---

In the Matter of the )  
)  
)

BUCKBEE-MEARS CO. )  
SUPERFUND SITE, )  
)

State Bank of India, New York Branch, )  
)

Settling Party. )  
)

PROCEEDING UNDER SECTION 122(h)(1) )  
OF CERCLA, 42 U.S.C. § 9622(h)(1). )  

---

U.S. EPA Region 2 Docket No.  
CERCLA-02-2012-2017

SETTLEMENT AGREEMENT

**TABLE OF CONTENTS**

I.	JURISDICTION.....	1
II.	BACKGROUND.....	1
III.	PARTIES BOUND.....	2
IV.	DEFINITIONS.....	3
V.	TRANSFER OF PROPERTY.....	5
VI.	PAYMENTS TO EPA.....	7
VII.	FAILURE TO COMPLY WITH SETTLEMENT AGREEMENT.....	9
VIII.	RELEASE AND WAIVER OF FEDERAL LIENS.....	10
IX.	COVENANT NOT TO SUE BY EPA.....	10
X.	RESERVATIONS OF RIGHTS BY EPA.....	10
XI.	COVENANT NOT TO SUE BY SETTLING PARTY.....	11
XII.	EFFECT OF SETTLEMENT/CONTRIBUTION.....	12
XIII.	SITE ACCESS/NOTICE TO SUCCESSORS/INSTITUTIONAL CONTROLS.....	13
XIV.	DUE CARE AND COOPERATION.....	15
XV.	ACCESS TO INFORMATION.....	15
XVI.	RETENTION OF RECORDS.....	16
XVII.	NOTICES AND SUBMISSIONS.....	17
XVIII.	INTEGRATION/APPENDICES.....	18
XIX.	PUBLIC COMMENT.....	18
XX.	TERMINATION AND SATISFACTION.....	18
XXI.	EFFECTIVE DATE.....	19

## I. JURISDICTION

1. This Agreement is entered into pursuant to the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9622(h)(1), which authority has been delegated to the Regional Administrators of EPA by EPA Delegation No. 14-14-D and was further delegated in Region 2 to the Director of the Emergency and Remedial Response Division by Regional Order No. R-1200, dated November 23, 2004. This Settlement Agreement is also entered into pursuant to the authority of the Attorney General of the United States to compromise and settle claims of the United States, which authority, in the circumstances of this Settlement, has been delegated to the Deputy Section Chiefs of the Environment and Natural Resources Division of the Department of Justice.

2. This Settlement Agreement is made and entered into by EPA and the State Bank of India, New York Branch ("Settling Party" or "the Bank"). Settling Party consents to and will not contest EPA's authority to enter into this Settlement Agreement or to implement or enforce its terms.

## II. BACKGROUND

3. This Settlement Agreement concerns the Buckbee-Mears Co. Superfund Site ("Site") located at 30 Kellogg Road, City of Cortland, Cortland County, New York. EPA alleges that the Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

4. On September 29, 2006, EPA Region 2 issued an Unilateral Administrative Order, Index No. CERCLA-02-2006-2024 ("UAO"), pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), directing International Electron Devices (USA), LLC ("IED") to undertake a time-critical removal action at the Site. IED failed or refused to comply with the Administrative Order.

5. After IED failed or refused to comply with the UAO, on January 11, 2007, EPA commenced a removal action at the Site pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604. EPA has incurred and continues to incur response costs on removal activities at the Site.

6. EPA alleges that IED is a responsible party pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and is liable for response costs incurred or to be incurred at or in connection with the Site.

7. Settling Party is partially owned by the Indian government and primarily engages in corporate and retail banking and trade finance. As of this date, Settling Party alleges that it is owed a sum of \$8,434,911 towards principal by IED under a Credit Agreement dated October 25, 2004, executed between IED and Settling Party (the "Credit Agreement"). Settling Party holds a Mortgage and Security Agreement ("Mortgage") given by IED on real property ("Property") which is part of the Site and personal property ("Personalty") at the Property. In addition, IED and its principals ("Guarantors") signed guaranty agreements ("Guaranty Agreements") with Settling Party, guarantying the repayment of loans advanced by Settling Party and used to purchase and

operate the Property. Settling Party has alleged that IED is in default on such loans and IED and Guarantors are liable for repayment of those loans pursuant to the various Guaranty Agreements. Settling Party has initiated a foreclosure action on the Property in the Cortland County Supreme Court (the "Local Court").

8. IED has abandoned the Site and neither IED nor its principals or their representatives have directed appropriate resources toward resolving liability at the Site. After many attempts to engage IED's counsel in settlement negotiations, Settling Party entered into discussions with EPA in an effort to decontaminate, market, and sell the Personalty at the Site, as well as to foreclose and/or sell the Property.

9. Settling Party represents that it holds a security interest in the Property, that it has not participated in the management of the Property, and thus, that it qualifies for the exclusion from liability set forth in Section 101(20)(E) of CERCLA, 42 U.S.C. § 9601(20)(E). Settling Party also agrees that it will continue to comply with CERCLA Section 101(20)(E) during the period in which it holds a security or ownership interest in the Property. Nonetheless, given the risk of claims under CERCLA being asserted against Settling Party notwithstanding CERCLA Section 101(20)(E), one of the purposes of this Settlement Agreement is to resolve, subject to the reservations and limitations contained in Section X (Reservation of Rights by EPA), any potential liability of Settling Party under CERCLA for the Existing Contamination, as defined below.

10. The resolution of this potential liability, in exchange for Settling Party's agreement to pay to EPA the Escrow Funds, including any interest or other income earned on the Escrow Funds, which totaled \$116,500.98 as of February 1, 2012, and share with EPA, pursuant to the terms below, certain proceeds from the sale of the Property and Personalty at the Site and any funds obtained through its pursuit of IED and/or the Guarantors under the Guaranty Agreements, is in the public interest.

11. EPA and Settling Party recognize that this Settlement Agreement has been negotiated in good faith. Settling Party agrees to comply with and be bound by the terms of this Settlement Agreement and further agrees that it will not contest the basis or validity of this Settlement Agreement or its terms.

### **III. PARTIES BOUND**

12. This Settlement Agreement shall be binding upon EPA and upon Settling Party and its successors and assigns. Any change in ownership or corporate or other legal status of Settling Party, including but not limited to, any transfer of assets or real or personal property, shall in no way alter Settling Party's responsibilities under this Settlement Agreement. The signatory to this Settlement Agreement certifies that he or she is authorized to enter into the terms and conditions of this Settlement Agreement and to bind legally Settling Party.

#### **IV. DEFINITIONS**

13. Unless otherwise expressly provided herein, terms used in this Settlement Agreement that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meanings assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Settlement Agreement or in any appendix attached hereto, the following definitions shall apply:

a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601-9675.

b. "City Tax Lien" shall mean the lien held by the City of Cortland ("City") against real property included within the Site more particularly described as Tax Map Parcel Number 87.78-01-01.000 on the Cortland County Tax Map, street address 30 Kellogg Road, City of Cortland, State of New York, for unpaid ad valorem real property taxes, which were approximately \$1.2 million as of December 31, 2011.

c. "County Tax Lien" shall mean the lien held by the County of Cortland ("County") against real property more particularly described as Tax Map Parcel Number 97.00-01-02.000 on the Cortland County Tax Map, street address 3727 Kellogg Road, Town of Cortlandville, State of New York, for unpaid ad valorem real property taxes, which were approximately \$5,727.28 as of December 31, 2011.

d. "Day" shall mean a calendar day. In computing any period of time under this Settlement Agreement, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

e. "Effective Date" shall mean the effective date of this Settlement Agreement as provided by Section XXI.

f. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities of the United States.

g. "Escrow Agreement" shall mean the agreement attached hereto as Appendix C, executed by the parties on June 6, 2009 and integrated fully into this Settlement Agreement, which specifies that proceeds from sale of all machinery, equipment, personalty and real estate at the Site are to be placed into an escrow account for disbursement to EPA and Settling Party as specified by the terms of the Escrow Agreement. The escrow account (Account number 3852544124) was established at Sterling National Bank in New York.

h. "Existing Contamination" shall mean:

i. any hazardous substances, pollutants or contaminants present or existing on or under the Property as of the Effective Date;

ii. any hazardous substances, pollutants or contaminants that migrated from the Property prior to the Effective Date; and

iii. any hazardous substances, pollutants or contaminants presently at the Site that migrate under or from the Property after the Effective Date.

i. "Fair Market Value" shall mean the highest amount bid at the foreclosure sale by a bidder that meets the qualifications set by the Local Court in the foreclosure action. In the event of a Transfer other than by foreclosure, including by deed or other assignment in lieu of foreclosure, it shall mean the price at which the Property would change hands between a willing buyer and a willing seller under actual market conditions, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts.

j. "Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

k. "Paragraph" shall mean a portion of this Settlement Agreement identified by an Arabic numeral or a lower case letter.

l. "Parties" shall mean EPA and Settling Party.

m. "Property" shall mean the real property located at 30 Kellogg Road in the City of Cortland, New York and the real property located at 3727 Kellogg Road, Town of Cortlandville, State of New York, more fully described in Appendix B and generally shown on the map included in Appendix A.

n. "Sales Proceeds" shall mean the total value of all consideration received by Settling Party for the Transfer, less \$150,000 attributable to costs for marketing and selling the Property incurred by Settling Party.

o. "Section" shall mean a portion of this Settlement Agreement identified by a Roman numeral.

p. "Settlement Agreement" shall mean this Settlement Agreement and any attached appendices. In the event of conflict between this Settlement Agreement and any appendix, the Settlement Agreement shall control.

q. "Settling Party" or "the Bank" shall mean State Bank of India, New York Branch.

r. "Site" shall mean the Buckbee-Mears Co. Superfund Site which includes approximately 50 acres and is located at 30 Kellogg Road, City of Cortland, Cortland County, New York, generally shown on the map included in Appendix A.

s. "State" shall mean the State of New York.

t. "Transfer" shall mean each sale, assignment or transfer by Settling Party (or its successors) of the Property, or any portion thereof, where title to the Property (or any portion or interest thereof), i) is transferred and Fair Market Value is received in consideration, or ii) is transferred by operation of law or otherwise, including foreclosure and its equivalents following default on the indebtedness secured, in whole or in part, by the Property, including, but not limited to, a deed or other assignment in lieu of foreclosure.

u. "United States" shall mean the United States of America, including its departments, agencies and instrumentalities.

## V. TRANSFER OF PROPERTY

14.a. It is the intention of the Parties that the Property will be sold in a foreclosure sale in the pending foreclosure action by Settling Party against IED and other lien holders. Within 30 days of the Effective Date of the Settlement Agreement, Settling Party shall file with the Local Court the necessary applications in accordance with New York State Real Property Actions and Proceedings Law ("RPAPL") to effectuate the appointment of a referee to compute the amount due Settling Party in the foreclosure action and thereafter, the foreclosure sale. Settling Party has no obligation to bid at the foreclosure sale and take title to the Property in its name.

b. In the event the Property is not sold through a foreclosure sale and Settling Party elects to obtain title in fee to the Property (hereinafter, "Title Date"), within 60 days of the Title Date, Settling Party shall use its best efforts to Transfer the Property and pay to EPA the amounts specified in Paragraph 19. Transfer may be made to a person affiliated with IED, or one of its successors or assigns, or with any current or former officer or employee of IED, or one of its successors or assigns ("IED Affiliate"), only if the amount paid is at least equal to the value of the property as shown in the latest appraisal report prepared by a person holding a current general real estate certification issued by the State of New York ("Certified Appraiser").

Such "best efforts" shall include, but shall not be limited to, the following:

i. Within 30 days of the Title Date, upon a request by EPA for a subsequent appraisal pursuant to Paragraph 15, Settling Party shall obtain a appraisal of the Property by a Certified Appraiser and shall submit copies of the appraisal to each Party within 10 days of the receipt of such documents;

ii. Within 30 days after receiving written approval by EPA of the appraisal, Settling Party shall list the Property with one or more real estate brokers, dealers or agents licensed in the State of New York who usually deal with the type of property in question. Settling Party shall consult with EPA regarding all terms and conditions of listing the Property with any broker, dealer or agent. The Property must be listed at an asking price that takes into account the appraised value and that is approved by EPA. Such consultation shall occur not later than 14 days before listing the Property;

iii. Settling Party shall maintain the Property in a condition suitable for showing to prospective buyers and, at all reasonable times, Settling Party shall provide access to the Property to all real estate brokers, dealers or agents referenced in Paragraph 14.b.ii. for the purpose of showing the Property to prospective purchasers; and

iv. Within five (5) business days of any offer to purchase the Property, Settling Party shall advise EPA of the offer in writing, including the identity of the prospective purchaser, and the consideration which was offered to be paid. Settling Party shall only accept an offer that has been approved by EPA.

15. Unless requested by EPA at other times, if a contract of sale of Property has not been executed within six (6) months of the date of listing, Settling Party shall adjust the asking price for the Property as approved by EPA, and continue such adjustment of the asking price every six (6) months thereafter with the prior approval of EPA until such time as a Transfer occurs.

16. If no Transfer has occurred within six (6) months of the most recent appraisal, EPA may request a subsequent appraisal.

17.a. At least 30 days prior to any proposed Transfer, unless otherwise approved by EPA in writing, Settling Party shall notify EPA of the proposed Transfer, which notice shall include the terms of the Transfer, a copy of the proposed Transfer agreement and the date, time, and location that the proposed Transfer will take place. The Transfer shall occur on a date mutually agreeable to EPA and the Bank, and EPA shall have the opportunity to attend the closing at which the Transfer occurs. In the case of a foreclosure sale, the Transfer will occur at the referee's office.

b. At the time when the Settling Party applies to the Local Court for a judgment of foreclosure sale, it shall request that the Local Court require that: (i) an IED Affiliate shall not be allowed to bid on a Property unless such bid amount is at least equal to the value of the Property as shown in the latest appraisal report prepared by a Certified Appraiser; (ii) every bidder must submit a certification to the referee stating that it is, or is not, an IED Affiliate and, if and as directed by the referee, demonstrate to the referee's satisfaction that it is not an IED Affiliate; and (iii) the terms of sale published in connection with the foreclosure auction include the requirements set forth in subparagraphs (i) and (ii) above.

c. Settling Party shall, at the time of the Transfer, present to EPA a copy of all of the closing documents, including final executed documentation for the conveyance and a work sheet setting forth the Sales Proceeds. Settling Party shall also provide EPA with documentation sufficient to show: 1) the total value of all consideration received by Settling Party for the Transfer at the time of the Transfer or 2) the amount obtained through foreclosure. The documentation must also include: 1) a tax statement showing the assessed valuation of the Property for each of the three years immediately preceding the Transfer; and 2) a schedule showing all outstanding indebtedness on the Property.

18. In the event of a Transfer of the Property or any portion thereof, Settling Party shall continue to be bound by all the terms and conditions, and subject to all the benefits, of this Settlement Agreement, except if the United States and Settling Party modify this Settlement Agreement in writing.

## **VI. PAYMENTS TO EPA**

### **19. Payment of Proceeds of Bank Foreclosure Sale of the Property.**

a. If the Property is sold pursuant to Section V. for \$455,001 or above, Settling Party shall, after deducting \$150,000 pursuant to Paragraph 13.n, on the date of Transfer of the Property:

i. pay to the City in full satisfaction of the City Tax Lien, the greater of \$302,881 (being the amount of City taxes in arrears as of September 29, 2006) or fifteen percent (15%) of the Sales Proceeds from the Transfer of the Property; and

ii. pay \$2,120 to the County in full satisfaction of the County Tax Lien.

b. Any remaining proceeds, after the above payments, shall be distributed to EPA, the Bank and the City in proportion to the percentage that the following amounts represent in relation to the combined total of said amounts: (i) for EPA, \$8,323,204; (ii) for the Bank, \$8,434,911; (iii) for the City, \$1,194,043 minus the greater of \$302,881 or fifteen percent (15%) of the Sales Proceeds.

c. If the Property is sold pursuant to Section V. for \$455,001 or less, then after the Bank is paid \$150,000 pursuant to Paragraph 13.n, \$302,881 will be distributed to the City and \$2,120 will be distributed to the County, to the extent funds are available. In the event the Property is sold for less than \$150,000, then the Bank will be entitled to the entire sale proceeds, and no more.

20. Payment of Funds from the Escrow Account. Within 10 days of the Effective Date of this agreement, EPA and Settling Party shall each execute disbursement instructions (hereinafter "Joint Instructions") in accordance with this Paragraph and Paragraphs 9(c) – (d), of the Escrow Agreement, attached hereto as Appendix C. The Escrow Agreement is incorporated into and made an enforceable part of this Settlement Agreement. In accordance with the Settlement Agreement and the Escrow Agreement, the Escrow Agent shall disburse all funds in the Escrow Account, including any interest or other income earned on the Escrow Funds, which totaled \$116,500.98 as of February 1, 2012, to the Hazardous Substance Superfund upon receipt of the Joint Instructions in accordance with Paragraph 9(d) of the Escrow Agreement. Paragraph 9(b) of the Escrow Agreement is no longer in effect as repairs were not and will not be undertaken in building #5.

21. Payment upon Recovery of Funds from the Guaranty Agreements. Settling Party shall use reasonable efforts to pursue Guarantors for additional amounts owed to Settling Party pursuant to the Guaranty Agreements. EPA recognizes that Settling Party may determine that it should terminate such efforts based upon commercial reasonableness. Prior to any decision to terminate, Settling Party shall consult with EPA. Settling Party shall pay to the Hazardous Substance

Superfund twenty five percent (25%) of all amounts recovered on the Guaranty Agreements within 45 days of such recovery in accordance with Paragraphs 22 and 23, below. Settling Party shall notify EPA of the amount of funds recovered within 20 days of such recovery.

22. The payments to be made pursuant to Paragraphs 19 and 21 above shall be remitted to EPA's account at the Federal Reserve Bank of New York via Electronic Funds Transfer ("EFT"). To make payment by EFT, Settling Party shall provide the following information to its bank:

- a. Amount of payment:
- b. Bank: **Federal Reserve Bank of New York**
- c. Account code for Federal Reserve Bank of New York account receiving the payment:  
**68010727**
- d. Federal Reserve Bank of New York ABA Routing Number: **021030004**
- e. SWIFT Address:  
**FRNYUS33**  
33 Liberty Street  
New York, NY 10045
- f. Field Tag 4200 of the Fedwire message should read:  
**D 68010727 Environmental Protection Agency**
- g. Name of Settling Party: **State Bank of India, New York Branch**
- h. Case number: **CERCLA-02-2012-2017**
- i. Site/Spill identifier: **02YH**

Along with this information, Settling Party shall instruct its bank to remit payment in the required amount via EFT to EPA's account with Federal Reserve Bank of New York.

23. At the time of payment, Settling Party shall send notice that such payment has been made to the EPA contact listed in Section XVII and also to:

U.S. Environmental Protection Agency  
26 W. Martin Luther King Drive  
Attention: FINANCE  
MS: NWD  
Cincinnati, Ohio 45268  
E-mail: [AcctsReceivable.CINWD@epa.gov](mailto:AcctsReceivable.CINWD@epa.gov)

Said notice shall include the date of the EFT, the payment amount, the name of this Site, the Index Number of this Settlement Agreement, and the name and address of Settling Party.

24. The total amount to be paid by Settling Party pursuant to Paragraphs 19 through 21 above shall be deposited in the Buckbee-Mears Co. Superfund Site Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

## **VII. FAILURE TO COMPLY WITH SETTLEMENT AGREEMENT**

### 25. Stipulated Penalty.

a. If any amounts due to EPA under Section VI. (Payments to EPA) are not paid by the required date, Settling Party shall pay to EPA, as a stipulated penalty, \$1,000 per violation per day that any such payment is late.

b. If Settling Party does not comply with the time frames required in Sections V. (Transfer of Property) and XVI. (Retention of Records), Settling Party shall pay to EPA, as a stipulated penalty, \$250 per violation per day of such noncompliance.

26. Stipulated penalties are due and payable within 30 days of the date of demand for payment of the penalties. All payments to EPA required under Paragraph 25 above shall be identified as "stipulated penalties" and shall be made in accordance with the procedures set forth in Paragraphs 22 and 23.

27. Penalties shall accrue as provided above regardless of whether EPA has notified Settling Party of the violation or made a demand for payment, but such payment need only be paid upon demand. All penalties shall begin to accrue on the day after performance is due, or the day a violation occurs, and shall continue to accrue through the final day of correction of the noncompliance or completion of the activity. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement Agreement.

28. In addition to any stipulated penalty payments required by this Section and any other remedies or sanctions available to EPA by virtue of Settling Party's failure to comply with the requirements of this Settlement Agreement, Settling Party shall be subject to enforcement action pursuant to Section 122(h)(3) of CERCLA, 42 U.S.C. § 9622(h)(3). If Settling Party fails to comply with the terms of this Settlement Agreement, it shall be liable for all enforcement costs incurred by the United States to obtain compliance with this Settlement Agreement.

29. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Settlement Agreement. Payment of stipulated penalties shall not excuse Settling Party from payment as required by Section VI or from performance of any other requirements of this Settlement Agreement.

## **VIII. RELEASE AND WAIVER OF FEDERAL LIENS**

30. Upon the later of (a) the payment required by Paragraph 19, or (b) within 10 days of the payment required by Paragraph 20, EPA shall deliver to Settling Party a Notice of Release of Lien ("Notice") releasing the CERCLA lien on the Site Property under Section 107(l) of CERCLA, 42 U.S.C. § 9607(l). Additionally, subject to the Reservation of Rights in Section X of this

Settlement Agreement, the United States agrees to release and waive any lien it may have on the Property now and in the future under Section 107(r) of CERCLA, 42 U.S.C. § 9607(r), for costs EPA has incurred or will incur in responding to a release or threat of release of hazardous substances that were disposed of at the Site.

31. Settling Party may, after consultation with EPA, terminate collection efforts against the Mortgagor and/or Guarantor under the Guaranty Agreements under Paragraph 21 of Section VI (Payments to EPA). Such consultation shall include a letter from Settling Party that describes the steps it has taken to recover such funds. Settling Party shall send such letter to the EPA contact listed in Section XVII (Notices and Submissions). In the event Settling Party collects funds pursuant to Paragraph 21 after EPA has released its lien on the property, such recovery remains subject to the disbursement scheme set forth in Paragraph 21.

#### **IX. COVENANT NOT TO SUE BY EPA**

32. Covenant Not to Sue by EPA. Except as specifically provided in Section X (Reservations of Rights by EPA), EPA covenants not to sue or take administrative action against Settling Party pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a) for Existing Contamination. This covenant shall take effect upon receipt by EPA of all amounts required by Section VI (Payments to EPA) and any amounts due under Section VII (Failure to Comply with Settlement Agreement). This covenant not to sue is conditioned upon the satisfactory performance by Settling Party of its obligations under this Settlement Agreement. This covenant not to sue extends only to Settling Party and does not extend to any other person.

#### **X. RESERVATIONS OF RIGHTS BY EPA**

33. EPA reserves, and this Settlement Agreement is without prejudice to, all rights against Settling Party with respect to all matters not expressly included within the Covenant Not to Sue by EPA in Paragraph 32. Notwithstanding any other provision of this Settlement Agreement, EPA reserves all rights against Settling Party with respect to:

- a. liability for failure of Settling Party to meet a requirement of this Settlement Agreement;
- b. liability based on the ownership or operation of the Site by Settling Party when such ownership or operation commences after signature of this Settlement Agreement;
- c. liability arising from the past, present, or future disposal, release or threat of release of a hazardous substance, pollutant, or contaminant outside of the Site and not within the definition of Existing Contamination;
- d. liability resulting from the release or threat of release of oil, hazardous substances, pollutants or contaminants at or in connection with the Site after the Effective Date and not within the definition of Existing Contamination;

e. liability resulting from exacerbation of Existing Contamination by Settling Party, its successors, assigns, lessees or sublessees;

f. criminal liability; and

g. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments.

34. With respect to any claim or cause of action asserted by the United States, if Settling party alleges that such claim or cause of action falls within the scope of EPA's covenant not to sue in paragraph 32 of this Settlement Agreement, then Settling Party must establish that the claim or cause of action, or any part thereof, is attributable solely to Existing Contamination and, if Settling Party alleges that it is excluded from the definition of "owner or operator" pursuant to Section 101(2)(E) of CERCLA, 42 U.S.C. § 9601(20)(E), then Settling Party must establish that it has complied with all of the requirements of Section 101(20)(E) of CERCLA, 42 U.S.C. § 9601(20)(E). Nothing in this Settlement Agreement is intended to be nor shall it be construed as a release, covenant not to sue, or compromise of any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the United States may have against any person, firm, corporation or other entity not a signatory to this Settlement Agreement.

#### **XI. COVENANT NOT TO SUE BY SETTLING PARTY**

35. Settling Party covenants not to sue and agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to Existing Contamination or this Settlement Agreement, including but not limited to:

a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claims arising out of the response actions at the Site in connection with the Existing Contamination, including any claim under the United States Constitution, the Constitution of the State of New York, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; and

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Existing Contamination.

36. Nothing in this Settlement Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. 300.700(d).

37. Settling Party agrees not to assert any claims and to waive all claims or causes of action that it may have for all matters relating to the Site, including for contribution, against any person

where the person's liability to Settling Party with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of hazardous substances at the Site, or having accepted for transport for disposal or treatment of hazardous substances at the Site, if all or part of the disposal, treatment, or transport occurred before April 1, 2001, and the total amount of material containing hazardous substances contributed by such person to the Site was less than 110 gallons of liquid materials or 200 pounds of solid materials.

38. The waiver in Paragraph 37 above shall not apply with respect to any defense, claim, or cause of action that Settling Party may have against any person meeting the above criteria if such person asserts a claim or cause of action relating to the Site against Settling Party. This waiver also shall not apply to any claim or cause of action against any person meeting the above criteria if EPA determines:

a. that such person has failed to comply with any EPA requests for information or administrative subpoenas issued pursuant to Sections 104(e) or 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) or 9622(e), or Section 3007 of RCRA, 42 U.S.C. § 6927, or has impeded or is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to the Site, or has been convicted of a criminal violation for the conduct to which this waiver would apply and that conviction has not been vitiated on appeal or otherwise; or

b. that the materials containing hazardous substances contributed to the Site by such person have contributed significantly, or could contribute significantly, either individually or in the aggregate, to the cost of response action or natural resource restoration at the Site.

## **XII. EFFECT OF SETTLEMENT/CONTRIBUTION**

39. Except as provided in Paragraph 37 (*de micromis* party waiver), nothing in this Settlement Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Settlement Agreement. Except as provided in Paragraph 37(*de micromis* party waiver), each of the Parties expressly reserves any and all rights (including, but not limited to, under Section 113 or CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action that it may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto. Nothing in this Settlement Agreement diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

40. The Parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), and that Settling Party is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), or as may be otherwise provided by law, for "matters addressed" in this Settlement Agreement. The "matters addressed" in this Settlement Agreement

are all response actions taken or to be taken and all response costs incurred or to be incurred by the United States or by any other person with respect to Existing Contamination.

41. In the event Settling Party is found, in connection with any action or claim it may assert to recover costs incurred or to be incurred with respect to Existing Contamination, not to qualify for the exclusion from liability under CERCLA's lender liability exemption set forth in Section 101(20)(E) of CERCLA, 42 U.S.C. § 9601(20)(E), the Parties agree that this Settlement Agreement shall then constitute an administrative settlement within the meaning of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B), pursuant to which Settling Party has resolved its liability for all response actions taken or to be taken and all response costs incurred or to be incurred by the United States or by any other person with respect to Existing Contamination.

42. Settling Party agrees that with respect to any suit or claim for contribution brought by it for matters related to this Settlement Agreement, it will notify EPA in writing no later than 60 days prior to the initiation of such suit or claim. Settling Party also agrees that, with respect to any suit or claim for contribution brought against it for matters related to this Settlement Agreement, it will notify EPA in writing within 10 days of service of the complaint or claim upon it. In addition, Settling Party shall notify EPA within 10 days of service or receipt of any Motion for Summary Judgment and within 10 days of receipt of any order from a court setting a case for trial, for matters related to this Settlement Agreement.

43. In any subsequent administrative or judicial proceeding initiated by EPA, or by the United States on behalf of EPA, for injunctive relief, recovery of response costs, or other relief relating to the Site, Settling Party shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenant not to sue by EPA set forth in Section IX.

### **XIII. SITE ACCESS/NOTICE TO SUCCESSORS/INSTITUTIONAL CONTROLS**

44. If the Site, or any other property where access is needed to implement response activities at the Site, is owned or controlled by Settling Party, Settling Party shall, commencing on the Effective Date of this Settlement Agreement, provide EPA, the State, and their representatives, including contractors, with access at all reasonable times to the Site, or to such other property, for the purpose of conducting any response activity related to the Site, including, but not limited to, the following activities:

- a. Monitoring, investigation, removal, remedial or other activities at the Site;
- b. Verifying any data or information submitted to the United States or the State;
- c. Conducting investigations relating to contamination at or near the Site;

d. Obtaining samples;

e. Assessing the need for, planning, or implementing response actions at or near the Site;

f. Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Party or its agents, consistent with Section XV. (Access to Information); and

g. Assessing Settling Party's compliance with this Settlement Agreement.

45. Notwithstanding any provision of this Settlement Agreement, EPA and the State retain all of their access authorities and rights, as well as all of their rights to require land/water use restrictions, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statute or regulations.

46. If the Site is owned or controlled by Settling Party, Settling Party shall submit to EPA for review and approval a notice to be filed with the Office of the County Clerk, Cortland County, State of New York, which shall provide notice to all successors-in-title that the Property is part of the Site, that EPA filed a lien under Section 107(l) of CERCLA, 42 U.S.C. § 9607(l), on March 16, 2007, and that EPA has released and waived its Section 107(l) lien on the Property in this Agreement in accordance with Section VIII (Release and Waiver of Federal Liens). Settling Party shall record the notice(s) within 14 days of EPA's approval of the notice(s). Settling Party shall provide EPA with a certified copy of the recorded notice(s) within seven (7) days of recording such notices(s).

47. If the Site is owned or controlled by Settling Party, Settling Party shall implement and comply with any land use restrictions and institutional controls on the Property in connection with a response action and EPA shall be a third-party beneficiary of any institutional controls in the form of easements or covenants. If requested by EPA, Settling Party shall record such land use restrictions or institutional controls implemented on the Property in the property deed prior to transferring the Property pursuant to Section V (Transfer of Property).

48. For so long as Settling Party is an owner or operator of the Property, Settling Party shall require that assignees, successors in interest, and any lessees, sublessees and other parties with rights to use the Property shall provide access and cooperation to EPA, its authorized officers, employees, representatives, and all other persons performing response actions under EPA oversight. Settling Party shall require that assignees, successors in interest, and any lessees, sublessees, and other parties with rights to use the Property implement and comply with any land use restrictions and institutional controls on the Property in connection with a response action, and not contest EPA's authority to enforce any land use restrictions and institutional controls on the Property.

49. If the Site is owned or controlled by Settling Party, upon sale or other conveyance of the Property or any part thereof, Settling Party shall require that each grantee, transferee or other holder of an interest in the Property or any part thereof shall provide access and cooperation to EPA, its authorized officers, employees, representatives, and all other persons performing response actions under EPA oversight. Settling Party shall require that each grantee, transferee or other holder of an interest in the Property or any part thereof shall implement and comply with any land use restrictions and institutional controls on the Property in connection with a response action and not contest EPA's authority to enforce any land use restrictions and institutional controls on the Property.

50. Settling Party shall provide a copy of this Settlement Agreement to any current lessee, sublessee, and other party with rights to use the Property as of the Effective Date.

#### **XIV. DUE CARE AND COOPERATION**

51. Settling Party shall exercise due care at the Site with respect to the Existing Contamination and shall comply with all applicable local, State, and federal laws and regulations. Settling Party recognizes that the implementation of response actions at the Site may interfere with Settling Party's use of the Site. To the extent the Site is owned or controlled by Settling Party, Settling Party agrees to cooperate fully with EPA in implementation of any further response action at the Site and further agrees not to interfere with such response actions. EPA agrees, consistent with its responsibilities under applicable law, to use reasonable efforts to minimize any interference at the Property by such entry and response. To the extent the Site is owned or controlled by Settling Party and it becomes aware of any action or occurrence that causes or threatens a release of hazardous substances, pollutants or contaminants at or from the Site that constitutes an emergency situation or may present an immediate threat to public health or the welfare or the environment, Settling Party shall immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall, in addition to complying with any applicable notification requirements under Section 103 of CERCLA, 42 U.S.C. § 9603, or any law, immediately notify EPA of such release or threatened release.

#### **XV. ACCESS TO INFORMATION**

52. If, prior to the transfer of all documents pursuant to Paragraph 55, and EPA so requests, Settling Party shall provide to EPA, copies of all records, reports, or information (hereinafter referred to as "Records") within its possession or control or obtained after using reasonable efforts from its contractors or agents relating to activities at the Site, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Site.

#### **53. Confidential Business Information and Privileged Documents.**

a. Settling Party may assert business confidentiality claims covering part or all of the records submitted to EPA under this Settlement Agreement to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. 2.203(b).

Records determined to be confidential by EPA will be accorded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies records when they are submitted to EPA, or if EPA has notified Settling Party that the records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2 Subpart B, the public may be given access to such records without further notice to Settling Party.

b. Settling Party may assert that certain records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Party asserts such a privilege in lieu of providing records, it shall provide EPA with the following: 1) the title of the record; 2) the date of the record; 3) the name, title, affiliation (*e.g.*, company or firm), and address of the author of the record; 4) the name and title of each addressee and recipient; 5) a description of the subject of the record; and 6) the privilege asserted. If a claim of privilege applies only to a portion of a record, the record shall be provided to EPA in redacted form to mask the privileged information only. Settling Party shall retain all records that it claims to be privileged until the United States has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in Settling Party's favor. However, no records created or generated pursuant to the requirements of this or any other settlement with the EPA pertaining to the Site shall be withheld on the grounds that they are privileged.

54. No claim of confidentiality shall be made with respect to any data, including but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site.

## **XVI. RETENTION OF RECORDS**

55. Until 30 days after the Transfer, Settling Party shall preserve and retain all non-identical copies of Records (as defined in Paragraph 52). Within 30 days after the Transfer, Settling Party shall deliver to EPA any such Records. Settling Party may assert that certain records are privileged under the attorney-client privilege or any other privilege recognized by a federal court of competent jurisdiction. If Settling Party asserts such a privilege, it shall provide EPA with the following: 1) the title of the record; 2) the date of the record; 3) the name, title, affiliation (*e.g.*, company or firm), and address of the author of the record; 4) the name and title of each addressee and recipient; 5) a description of the subject of the record; and 6) the privilege asserted. If a claim of privilege applies only to a portion of a record, the record shall be provided to EPA in redacted form to mask the privileged information only. Settling Party shall retain all records that it claims to be privileged until EPA has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in Settling Party's favor. However, no records created or generated pursuant to the requirements of this or any other settlement with the EPA pertaining to the Site shall be withheld on the grounds that they are privileged.

56. The Settling Party hereby certifies that, to the best of its knowledge and belief, after thorough inquiry, it has:

a. not altered, mutilated, discarded, destroyed or otherwise disposed of any records, reports, or information relating to its potential liability regarding the Site, since notification of potential liability by the United States or the State or the filing of a suit against it regarding the Site and that it has fully complied with any and all EPA requests for information regarding the Site pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927, and

b. fully and accurately disclosed to EPA all information known to Settling Party and all information in the possession or control of its officers, directors, employees, contractors and agents which relates in any way to any Existing Contamination or any past or potential future release of hazardous substances, pollutants or contaminants at or from the Site and to its qualification for this Agreement. Settling Party also certifies that to the best of its knowledge and belief it has not caused or contributed to a release or threat of release of hazardous substances or pollutants or contaminants at the Site. If the United States determines that information provided by Purchaser is not materially accurate and complete, the Agreement, within the sole discretion of EPA, shall be null and void and EPA reserves all rights it may have.

#### **XVII. NOTICES AND SUBMISSIONS**

57. Whenever, under the terms of this Settlement Agreement, notice is required to be given or a document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Party in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of this Settlement Agreement with respect to EPA and Settling Party.

As to EPA: Office of Regional Counsel  
Attn: Buckbee-Mears Co. Superfund Site Attorney  
U.S. EPA, Region 2  
290 Broadway, 17<sup>th</sup> Floor  
New York, NY 10007-1866

As to Settling Party: Appen Menon, Esq.  
Wormser, Kiely, Galef & Jacobs LLP  
825 Third Avenue  
New York, New York 10022

State Bank of India, New York Branch  
Attn: Chief Executive Officer  
460 Park Avenue  
New York, NY 10022

## **XVIII. INTEGRATION/APPENDICES**

58. This Settlement Agreement and its appendices constitute the final, complete and exclusive Settlement Agreement and understanding between the Parties with respect to the settlement embodied in this Settlement Agreement. The Parties acknowledge that there are no representations, settlement agreements or understandings relating to the settlement other than those expressly contained in this Settlement Agreement. The following appendices are attached to and incorporated into this Settlement Agreement:

“Appendix A” is the map of the Site;  
“Appendix B” is the description of the Site Property;  
“Appendix C” is the Escrow Agreement.

## **XIX. PUBLIC COMMENT**

59. This Settlement Agreement shall be subject to a public comment period of not less than 30 days pursuant to Section 122(i) of CERCLA, 42 U.S.C. § 9622(i). In accordance with Section 122(i)(3) of CERCLA, the United States may modify or withdraw its consent to this Settlement Agreement if comments received disclose facts or considerations which indicate that this Settlement Agreement is inappropriate, improper or inadequate.

## **XX. TERMINATION AND SATISFACTION**

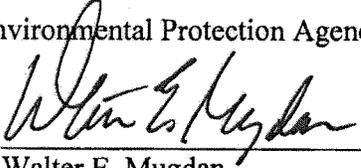
60. Any time after Settling Party has fully complied with all requirements of this Settlement Agreement, it may submit to EPA a written request for termination of this Settlement Agreement. Within 30 days of its receipt of such request, EPA will endeavor to respond to the request in writing. If EPA determines that the obligations required under this Settlement Agreement have been fully satisfied, then EPA will endeavor to promptly so notify Settling Defendant in writing, in which case this Settlement Agreement shall be terminated as of the date of such notice. If EPA determines that the obligations required under this Settlement Agreement have not been fully satisfied, then EPA will endeavor to promptly notify Settling Party and provide a list of the deficiencies. In that case, any time after correcting such deficiencies, Settling Party may resubmit a request for termination of the Settlement Agreement, in which case the Parties shall follow the procedures set forth in this Paragraph, beginning in the second sentence. This process shall continue until satisfaction and termination have been achieved.

**XXI. EFFECTIVE DATE**

61. The Effective Date of this Agreement shall be the date upon which EPA issues written notice that the public comment period pursuant to Paragraph 59 has closed and that comments received, if any, do not require modification of or withdrawal by the United States from this Agreement.

IT IS SO AGREED:

U.S. Environmental Protection Agency

By:   
Walter E. Mugdan

Director  
Emergency and Remedial Response Division  
U.S. Environmental Protection Agency  
Region 2

August 20, 2012  
Date

Buckbee-Mears Co. Superfund Site, City of Cortland, Cortland County, New York,  
Index Number CERCLA-02-2012-2017

United States Department of Justice

By:

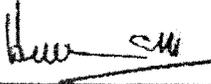
\_\_\_\_\_  
Bruce S. Gelber  
Deputy Assistant Attorney General

\_\_\_\_\_  
Date

THE UNDERSIGNED SETTLING PARTY enters into this Settlement Agreement in the matter of Index Number CERCLA-02-2012-2017 relating to the Buckbee-Mears Co. Superfund Site, City of Cortland, Cortland County, New York:

NAME AND ADDRESS OF SETTLING PARTY: State Bank of India  
(please print or type) New York Branch  
460 Park Avenue New York-10022

NAME AND TITLE OF SIGNATORY: Sujit Kumar Varma  
(please print or type) CEO

  
\_\_\_\_\_  
SIGNATURE

08.17.2012  
DATE

**CHIEF EXECUTIVE OFFICER  
STATE BANK OF INDIA  
NEW YORK BRANCH  
460 PARK AVE., N.Y., N.Y. 10022**

